IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION [P.I.L.] NO. 2827 OF 2003

1. B.G.Deshmukh,
of Mumbai Indian Inhabitant
residing at 41, Buena Vista,
General J. Bhosle Marg
Mumbai 400 021.

2. Alyque Padamsee,
of Mumbai Indian Inhabitant,
residing at Christmas Bldy.
3rd Flr., Flat H Westfield Estate
Warden Road, Mumbai 400 026

3. Julio Ribeiro, of Mumbai,
Indian Inhabitant,
residing at 51, Sagar Tarang,
Khan Abdul Gaffar
Khan Road, Worli Seaface,
Mumbai 400 025.

4. Gerson Da Cunha,
of Mumbai Indian Inhabitant,
residing at 10, Fairlawn,
28 Maharishi Karve Road,
Mumbai 400 020.

5.Vinod Kumar,
residing at Roshan Nagar,
Behram Baug
Jogeshwari, Mumbai.

6. Ayub Khan,
residing at Mohili Village,
Saki Naka, Andheri East,
Mumbai.

7.Sabit Ali,
residing at A 303 Leela Sagar,
Yari Road, Versova,
Andheri West, Mumbai 400 061.

8.Sanser Singh,
residing at Marol Maroshi Raod,
Lok Bharati Complex,
Andheri Easwt,Mumbai 400 059 ..Petitioners

VERSUS

1.The State of Maharashtra

2.The Director General
of Police for the State of
Maharashtra,
having his office at
Maharashtra State Police
Head Quarters,Shahid Bhagat Sing
Marg, Old Council Hall,
Mumbai 400 039.

3.The Commissioner of Police
for Greater Mumbai,
having his office
at Opp.Crawford Market,
D.N.Road, Mumbai 400 001

4.The Shiv Sena Party
having its office at Shiv
Sena Bhavan, Gadkari Chowk,
Dadar, Mumbai 400 028.

5.The Bharatiya Janata Party
having its office at
C.D.O.Barrack No.1,
Jeevan Beema Marg,
Nariman Point, Mumbai 400 020 ....Respondents.

Mr Aspi Chinoy, Senior Counsel with Mr. Janak Dwarkadas, Senior Counsel, Mr. Shiraz Rustomjee, Mr.Jamshed Mistry and Mr. Rahul Dwarkadas instructed by M/s Wadia Gandhy and co for petitioners

Mr.V.A.Thorat, Advocate General with Mr.Niranjan Pandit, Asst.Govt. Pleader,for respondent nos.l to 3

Mr S.L.Sanghi, Senior Counsel with Mr. A.J.Rana, Senior Counsel, Balkrishna Joshi, Ms Bharti Mahant and Ms Pushpa Diwan for respondent no.4

Mr. Bal Apte, Senior Counsel with Mr Sanjeev

Kanchan, Mr. Subhash Jha and Mr. Gaurav Agarwal for respondent no.5

CORAM: A.P.SHAH Acg C.J.&

S.U KAMDAR J.
Dated 23rd July.2004

ORAL JUDGMENT:(Per A.P.Shah Acg C.J.)

1. In this writ petition, the petitioners have prayed for issuance of a writ, order or direction directing the two political parties namely Shiv Sena and Bharatiya Janata Party, who have been impleaded as respondent nos. 4 and 5, to pay damages /compensation to the petitioners and other citizens of Mumbai through a 'bandh loss compensation fund' for having called for and enforced the 'bandh'/forcible closure of Mumbai city on 30th July 2003 and having thus flagrantly violated their fundamental rights and freedom, commensurate with the loss caused to the city and its residents and citizens by their wrongful, illegal and unconstitutional acts. The petitioners have also prayed for issuance of a writ, order or direction to the State, Director General of Police and Commissioner of Police - respondent nos. l to 3 to arrest and prosecute those involved in rail and rasta rokos designed to forcibly stop free movement of road traffic and local trains and assaults on busses, trains, private cars of citizens, and leaders at whose direction and instance such wrongful acts were carried out, and to take steps in future to prevent such wrongful

interference with the constitutionally guaranteed fundamental rights of the citizens by ensuring that no political party or group can by force or intimidation stop or interfere with the road and rail traffic or the free movement of the citizens throughout Mumbai.

2. According to the petitioners the Supreme Court by its judgment delivered in the case of Communist Party of India (M) vs Bharat Kumar reported in AIR l998 SC l84, upheld the decision of the Full Bench of Kerala High Court in Bharat Kumar K. Palicha vs State of Kerala reported in AIR l997 Kerala 29l, that the organizing of a 'bandh' by a political party or other organizations, which has the effect of closing down all activities in a city or State by the threat of violence or by actual violence directed both against public and private property and against the vast majority who wish to exercise their right to work, trade, travel or study, violates the fundamental rights of the citizens of the city/State which are guaranteed by Articles l9 and 2l of the Constitution of India. Pursuant to these judgments the petitioner nos.l to 4 had earlier filed Writ Petition No.25l4 of 2000 where they had joined along with respondent nos.l to 3

various political parties including respondent nos. 4 and 5, and had sought orders preventing holding of bandhs in general. The Division Bench comprising of the learned the Chief Justice B. P. Singh (as His Lordship then was) and V.K.Tahilramani J. by its judgment dated 4th July 200l directed the respondents to act in accordance with the judgment and order of the Supreme Court with regard to the action that must be taken by the State Government when call for a 'bandh' is made and to take necessary action in accordance therewith. The petitioners complain that notwithstanding the judgment of the Supreme Court of India and of this Court, on 29th July 2003 the respondent nos. 4 and 5 called for and organized the 'Mumbai bandh' on 30th July 2003, stated to be in consequence of the bomb blast at Ghatkopar. The petitioners have alleged that the 'Mumbai bandh' call given on 29th July 2003 was followed by the leaders of respondent no. 4 and 5 issuing statements containing direct threats and also veiled hints that violence would follow if the citizens did not listen to them and support the call for 'Mumbai bandh'. It is further alleged that the activists and members of respondent nos. 4 and 5 with the intent of enforcing the 'Mumbai

bandh' and forcing the closure of activity and movement in the city, carried on rail and rasta rokos at numerous places, prevented the movement of local trains, BEST buses and private vehicles. They also threatened and assaulted those citizens and used violence, who attempted to travel to work and by such threats and use of violence they succeeded in forcibly closing down almost all industrial and commercial and other activities and travel in the city of Mumbai. The petitioners contend that the police force under the control of respondent nos.l to 3 also failed to take appropriate and effective steps to stop and disperse such activities. No steps were taken to arrest, detain or prosecute those who were stopping busses,trains and private vehicles and assaulting the private citizens, who had attempted to venture out, notwithstanding the threat and intimidation.

3. The petitioners claim that as a consequence of the 'bandh', industrial and commercial activity in the city of Mumbai was almost crippled and the taxis and rikshaws were forced to stay off the road till 6 p.m. and the BEST busses and local trains were running only skeleton service and the railway authorities were forced to cancel scheduled

service. The petitioners further claim that the organized sector of Mumbai has daily G.D.P. (on value added basis) of approximately Rs.200 crores and Rs.l00 crores in unorganized sector. This is

distinct from daily turnover of both sectors which would be much larger. According to the petitioners even on the basis of a conservative estimate, enforcement of ‘bandh’ has resulted in loss of more than Rs.50 crores to the citizens of Mumbai. The petitioners have, therefore, prayed for a direction to respondent nos. 4 and 5 to pay damages/compensation in the sum of Rs.50 crores or such sum as may be fixed by this Court for violation of constitutional rights of the petitioners and other citizens of Mumbai. The petitioners have further prayed that a Special Fund be constituted named as "The 30th July, 2003 Bandh Loss Compensation Fund" and thereafter claims be invited from all citizens, who have suffered losses as a consequence of the enforced closure/bandh on 30th July 2003 and on satisfactory material being produced by them in support of the claim, the amount may be paid over to such affected and aggrieved citizens from the said fund and any unclaimed amount in the said fund be utilized for

providing facilities/ benefits/ additional services to the affected citizens of Mumbai.

4. The State, in its counter, in addition to denying the allegation of the Police inaction during the 'Mumbai bandh', contended that there were some stray incidents of rasta and rail rokos at various places where the movements of busses, local trains and private vehicles were prevented and obstructed but whenever such incidents were noticed and brought to the notice of the Police, necessary action, including arrest of those involved, has been taken. The Police took all efforts to ensure that there is no interference in road and rail traffic and that the vehicles are not disrupted on the date the 'bandh' was called. It was contended that it is the primary duty as well as concern of the Police to try and maintain peace and prevent any law and order situation to arise. The entire problem required tactful and mature handling of the situation as well as of the mob psychology, as the primary concern is to keep and maintain peace and to prevent a law and order problem arising or worsening. It was contended that making of arrest of leaders would be to play into the hands of those leaders, resulting in

eruption of unnecessary and continued violence and agitation, as has been seen in the past all over Mumbai. It was contended that many people did not come out of the residences, either due to fear or due to support of the ‘bandh’, which was called to protest against the bomb blast. In either case, there is nothing that Police can do and no matter whatever steps the Government and the Police take, the element of fear is inherent in the minds of public and nothing can change that. This is the reason why the establishments were closed and the Police are in no way responsible for the same. It was contended that when directions have already been given in Writ Petition No. 25l4 of 2000 and the State has followed these direction and taken appropriate steps,there is no reason why any further directions are required to be given in the present case.

5. The Shiv Sena and Bharatiya Janata Party have also filed counter affidavits. In addition to questioning the entitlement of the petitioners to invoke jurisdiction of this Court under Article 226 of the Constitution and finding fault with the nature of the reliefs prayed for in the petition, essential contention raised is that hartal/strike

and bandh are always recognized as a peaceful protest, resentment and expression of feelings of the people against the act or omission or dereliction of duty on the part of the authorities and it forms part of their fundamental right of freedom of expression guaranteed by Article l9(l)(a) of the Constitution. There is no basic difference between a call for ‘hartal’ or ‘strike‘ and a call for bandh. The holding of Mumbai bandh was spontaneous expression of protest against bomb blast at Ghatkopar in which four persons were killed and many others were injured.It was contended that there was no direct threat of any violence or consequence given if the citizens did not support the ‘bandh’. The ’bandh’ was by and large peaceful and there was no violation of any fundamental rights of the citizens of Mumbai.According to these respondents the industrial and commercial houses voluntarily supported the bandh in order to deprecate the terrorist activities. Majority of the taxi and rikshaw unions are controlled by the Shiv Sena and Bharatiya Janata Party and they joined the ‘bandh’ voluntarily. The call for ‘bandh’ received spontaneous support from all quarters including muslim organizations to deprecate the act of

terrorism. It was in protest against what respondent nos. 4 and 5 considerd inaction of the Union Government and the State Government against the repeated acts of terrorism, as a political movement, the call was given to the residents of Mumbai to abstain from work which in common parlance is described as ‘bandh’. As is inevitable in such situation, various leaders of political parties do lead procession , which is their constitutional right and at times take steps of democratic protest which may interfere with movement of traffic particularly transport which belongs to Government. Nevertheless it is only a form of protest directed against the Government which is the fundamental right of political parties guaranteed under the Constitution of India. It was vehemently denied that the ‘bandh’ has resulted in any loss to the citizens of Mumbai. It was contended that the figures given by the petitioners are highly exaggerated and the petitioners be put to the strict proof of the alleged loss caused to the citizens. In any event the prayer for compensation cannot be invoked in writ jurisdiction under Article 226 of the Constitution and the same requires to be dealt with in appropriate proceedings and such disputed issues cannot be

determined in writ jurisdiction.

6. In the affidavit in rejoinder the petitioners reiterated that as a consequence of enforced bandh by respondent nos. 4 and 5, rail and rasta rokos and violence and intimidation, city of Mumbai was almost totally crippled on 30th July 2003. In the guise of handling the situation 'tactfully' police have virtually allowed the activists and members of respondent nos. 4 and 5 to intimidate and coerce l5 million inhabitants of the city to stop their normal activity and to stay at home. The police authorities cannot plead helplessness in dispelling the 'fear' felt by the citizens which is the key element in calling for and enforcing bandhs. It was contended that attempt to portray wrongful and unconstitutional bandh of 30th July 2003 as a mere peaceful call/appeal to abstain from travel or going to work is also belied by the material placed on record which unmistakably shows the violent, coercive, and intimidatory nature of the bandh called and enforced by respondent nos. 4 and 5.

7. Before proceeding to consider various issues raised before us, it is necessary to understand what is a 'bandh'. 'Bandh' is a Hindi word meaning

"closed" or "locked". The expression thus conveys an idea that everything is to be locked or closed. Therefore when the organizers of bandh, call for a bandh, they clearly express their intention that they expect all activities to come to a stand still on the date of the bandh. Thus giving a call for a bandh is qualitatively different than giving a call for strike or hartal and is clearly intended to close down all travel, commercial and industrial activity in a city/State by threats of violence or actual violence directed against those who dare to venture out despite the threats and intimidating statements made by organizers of the bandh. The Supreme Court in the case of Bharat Kumar (supra) has specifically approved the distinction drawn by the Full Bench of the Kerala High Court between a ‘bandh’ and calling for a ‘general strike’ or ‘hartal’ with reference to the effect of a bandh on the fundamental rights of the citizens and has further held that "It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce bandh which interferes with the exercise of fundamental freedoms of other citizens, in order to causing national loss in many ways". The relevant observations of the Full Bench read as under:

"....A call for a bandh is obviously distinct and different from the call for a general strike or the call for a hartal. The intention of the callers of the "bandh" is to ensure that no activity either public or private is carried on that day, is also clear from their further statements sometimes made that the newspapers, hospitals and the milk supply are excluded from the bandh. This clarification obviously implies that otherwise the intention is that those service are also to be affected. If the intention is to prevent the milk supply, prevent the distribution of the newspapers, prevent people going to the hospitals for treatment, prevent the people from traveling and to generally prevent them from attending to their work either in service of the State or in their own interest, that obviously means that it amounts to a negation of the rights of the citizens to enjoy their natural rights , their fundamental freedoms and the exercise of their fundamental rights. It is no doubt true that while calling for a bandh it is

not also announced that any citizen not participating in the bundh will be physically prevented or attacked. But experience has shown that when any attempt is made either to ply vehicles on the day of the bandh or to attend to one's own work, or to open one's shop to carry on trade, it has resulted in the concerned person being threatened with consequences if he took out his vehicle, if he went for his work or if he kept his shop open. The leaders of the political parties who call for the bandh cannot escape by saying that they are not directly telling the citizens not to do these things under threat but if some of the participants in the bandh indulge in such activities,they cannot be held responsible. Obviously, they can with reasonable intelligence foresee the consequences of their action in calling for the bandh. Nor can they pretend that the consequences that arise out of the calling for a bandh, is too remote or does not have reasonable proximity to the call they have made. Learned counsel appearing for the political parties contended that this court cannot take note

of what actually happens when a bandh is called, but this court can only go by the call for the bandh itself which does not involve the call for violence or forceful prevention of people from going bout their avocation. We do not think that we would be justified in adopting such an ostrich like policy. We cannot ignore the reality of what is involved when a bandh is called".

"....The counter affidavit filed by the State itself has revealed that more often than not the call for a bandh is accompanied by violence and forceful preventing of persons from attending to their avocations. Moreover, a bandh involves the stopping of all transport systems in the State preventing the common man from even going to the hospital in an emergency so as to bring succour to a citizen who has been taken seriously ill. Thus, on the materials made available and taking judicial notice of what generally happens in a bandh, which has resulted even in the working of the High Court being totally disrupted by counsel not being in a position to attend to the court

we are inclined to understand the concept of a bandh as one where people are expected not to attend to their work or to travel for any purposes nor to carry on their trades with a threat held out either express or implied that any attempt to go against the call for the bandh would result in danger to life and property. Even if there is no express or implied threat of physical violence to those who are not in sympathy with the bandh, there is clearly a menacing psychological fear instilled into the citizen by a call for a bandh which precludes him from enjoying his fundamental freedoms or exercising his fundamental rights. We are therefore not inclined to accept the contention of the political parties and the learned Advocate General that the calling for a bandh does not involve the holding out of any threat express or implied to the citizens not to carry on his activities or to practise his avocation on the day of the bandh. We are inclined to the view that the call for a bandh implies a threat to the citizens that any failure on his part to honour the call, would result in either

injury to person or injury to property and involves preventing a citizen by instilling into him the psychological fear that if he defies the call for the bandh, he will be dealt with by those who are allegedly, supporters of the bandh".

(Emphasis supplied)

8. The Full Bench of Kerala High Court has expressly held that calling for and enforcing a bandh amounts to violation of fundamental rights of the citizens to move freely throughout the territories of India and practise any profession or to carry on any occupation, trade or business and that there is also violation of Article 2l of the Constitution, in that there is deprivation of personal liberty and even threat to life without any procedure in that behalf being established by law. It was also held that political parties and organisations have no fundamental right to call for and enforce bandh and such political parties and organisations are liable to compensate the Goverment, public and private citizens for the loss caused by such bandhs. The observations of the Full Bench in paras l2,l3, l7 and l8 which were

specifically approved by the Supreme Court read as under:

> "l2. It is true that there is no legislative definition of the expression ‘bandh such a definition could not be tested in the crucible of constitutionality. But does the absence of a definition deprive the citizen of a right to approach this court to seek relief against the bandh if he is able to establish before the court that his fundamental rights are curtailed or destroyed by the calling of and the holding of a bandh? When Art l9(l) of the Constitution guarantees to a citizen the fundamental rights referred to therein and when Art 2l confers a right on any person not necessarily a citizen not to be deprived of his life or personal liberty except according to procedure established by law, would it be proper for the court to throw up its hands in despair on the ground that in the absence of any law curtailing such rights,it cannot test the constitutionality of the action? We think not. <u>When properly understood, the calling of a bandh entails</u>

the restriction of the free movement of the citizen an his right to carry on his avocation and if the Legislature does not make any law either prohibiting it or curtailing it or regulating it, we think that it is the duty of the court to step into the protect of the rights of the citizen so as to ensure that the freedoms available to him are not curtailed by any person or any political organizations. The way in this respect to the way has been shown by the Supreme Court in Bandhua Mukti Morcha vs Union of India, AIR l984 SC 802".

l3.It is argued on behalf of the respondents that a bandh could be peaceful or violent and even if the court were to act, it could act only to curtail violent bandhs and not peaceful bundhs. It is contended that the court cannot presume or generalize that the calling of a bandh always entails actual violence or the threat of violence in not participating in or acquiescing in the bandh. The decision in Kameshwar Prasad vs State of Bihar, AIR l962 SC ll66 is referred to in that context. This theoretical aspect

expounded by counsel for the respondents does not appeal to us especially since as understood in our country and certainly in our State, the calling for a bandh is clearly different from a call for a general strike or a hartal. We have already noticed that a call for a bandh holds out a warning to the citizen that if he were to go out for his work or to open his shop, he would be prevented and his attempt to take his vehicle on to the road will also be dealt with.It is true that theoretically it is for the State to control any possible violence or to ensure that a bandh is not accompanied by violence.But our present set up, the reluctance and sometimes the political subservience of the law enforcing agencies and the absence of political will exhibited by those in power to the relevant time, has really led to a situation where there is no effective attempt made by the law enforcing agencies either to prevent violence or to ensure that those citizens who do not want to participate in the bandh are given the opportunity to exercise their right to work their right to trade or their right to

study. We cannot also ignore the increasing frequency in the calling holding and enforcing of the bandhs in the State and the destruction of public and private property. In the face of this reality, we think that when we consider the impact of a bandh on the freedom of a citizen, we are not merely theorizing but are only taking note of what happens around us when a bandh is called and a citizen attempts either to defy it or seeks to ignore it.We are not in a position to agree with the counsel for the respondents that there are no sufficient allegations either in OP 755l of l994 or in OP l2469 of l995 which would enable us to come to such a conclusion . In fact, as the uncontroverted allegations in OP12469 of 1995 are specific and are also supported by some newspapers clippings which though could not be relied on as prelimary material, could be taken note of as supporting material for the allegations in the Original Petition.

l7. No political party or organization can claim that it is entitled to paralyse the

industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its view point from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by political party or those comprising it. The claim for relief by the petitioners in these Original Petitions will have to be considered in this background.

18. The contention that no relief can be granted against the political parties in these proceedings under Art 226 of the Constitution cannot be accepted in its entirety.As indicated already, this Court has ample jurisdiction to grant a declaratory relief to the petitioners in the presence of the political party respondents. This is all the more so since the case of the petitioners is based on their fundamental rights guaranteed by the Constitution. The State has not taken any

steps to control or regulate the bandhs. The stand adopted by the Advocate General is that the court cannot compel the State or the Legislature to issue orders or make law in that regard. As we find that organized bodies or Associations or registered political parties by their act of calling and holding bandhs, trample upon the rights of the citizens of the country protected by the Constitution, we are of the view that this court has sufficient jurisdiction to declare that the calling of a 'bandh' and the holding of it, is unconstitutional especially since, it is undoubted that the holding of 'bandhs' are not in the interest of the Nation, but tend to retard the progress of the Nation by leading to national loss of production. We cannot also ignore the destruction of public and private property when a bandh is enforced by the political parties or other organisations. We are inclined to the view that the political parties and the organizations which call for such bandhs and enforce them are really liable to compensate the Government, the public and the private

> citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organizers of such bandhs. We think that these aspects justify our intervention under Art 226 of the Constitution."

(Emphasis supplied).

9. Coming to the facts of the present case it is not disputed before us that respondent nos. 4 and 5 called for and enforced "Mumbai bandh" on 30th July 2003. It was, however, strenuously argued by Mr.Sanghi and Mr.Apte, learned Counsel appearing for respondent nos. 4 and 5 that it was a mere peaceful call for strike or hartal in which no element of force or intimidation was involved and the response to the bandh by the citizens was spontaneous. It was contended that entire case of the petitioners is based on the newspaper reports which are totally inadmissible in evidence. Even if we ignore the press reports as urged by the learned counsel for respondent nos. 4 and 5 the fact remains that the Executive Chief of Shiv Sena Mr.Udhav Thackarey had gone on record saying that

"Mumbaikars are familiar with the Sena sponsored bandhs---Shiv sainiks would request the people to make the bandh a success in their usual style". This statement of Mr.Thackray which appeared in the Times of India is not denied, though it is sought to be contended that interpretation given by the petitioners to the said statement is not correct. The President of Mumbai Unit of Bharatiya Janata Party in an interview reported in the press on the eve of bandh had categorically stated that there would be no damage or violence, if the people listened to the bandh organisers and supported the bandh. The intention was obviously to ensure that no activity either public or private is carried on that day is also clear from the further statement of Mr.Thackray that newspapers, hospitals, water supply, milk distribution etc would be exempted from the bandh thereby implying that otherwise the intention was that those were also to be affected. Further undisputed fact is that on 30th July 2003 numerous rail and rasta rokos were organized which could be seen from the fact that BEST was able to operate only 62l buses against normal daily figure of l9l6 busses. Forty busses were damaged in stone throwing and four BEST drivers were injured and because of stone throwing and rasta rokos, the

plying of BEST buses had to be completely stopped from l p.m.to 5 p.m. The local trains were also stopped for a considerable period at numerous places by mobs through rail rokos.It has come on record that Central Railway was forced to cancel ll3 trains, whereas Western Railway cancelled 25 trains. A number of incidents of stone throwing were recorded by the police. Again, the undisputed fact is that even Mantralaya and this Court were unable to function on the bandh day. The petitioners have catalogued in paragraphs 7 to ll of the petition specific instances of coercion and intimidation, alongwith the names of the activists and members of respondent nos.4 and 5. There is no denial to the statements made in the said paras though news papers relied upon by the petitioners are generally denied.

10. The petitioners have brought on record the specific acts of rail rokos with photographs published in newspapers, of the prominent leaders of respondent no.4 halting trains, buses, vehicles etc. Newspaper clippings containing interviews of Vibhag Pramukhs of Shiv Sena setting out their detailed plans to enforce "bandh" by forcibly stopping road and rail traffic and their plans to

intimidate the people by a show of strength and the use of force are also placed on record. The newspaper reports which though could not be relied upon as primary material would be taken note of as supporting material for the allegations made in the petition. It is true that while calling for the bandh, it was not announced that any citizen not participating in the bandh will be physically prevented or attacked. But as pointed out by the Full Bench of Kerala High Court, experience has shown that when any attempt is made either to ply vehicles on the day of the bandh or to attend to one's own work, or to open one's shop to carry on trade, it has resulted in the concerned person being threatened with consequences if he took out his vehicle, if he went for his work or if he kept his shop open. The Court cannot ignore the reality of what generally happens when a bandh is called. The attempt of respondent nos. 4 and 5 to depict the call for bandh on 30th July, 2003, as a mere peaceful appeal to citizens to abstain from work is completely belied by the material produced on record regarding violent and intimidatory nature of the bandh called and enforced by respondent nos. 4 and 5. Apart from the material produced on record by the petitioners the counter affidavit filed by

he State Govt. itself has revealed that there were several incidents of rasta rokos and rail rokos and buses were stoned. Thus, on the material made available and taking a judicial note of what is involved in a bandh it is not possible to accept the submission of the learned Counsel for respondent nos. 4 and 5 that the call for bandh was a mere peaceful appeal to the citizens of the city. The experience has shown that even if there is no express or implied threat of physical violence to those who are not in sympathy with the bandh, there is clearly menacing psychological fear instilled into the minds of citizens by call for bandh which preclude them from enjoying fundamental freedoms or exercising their fundamental rights. It is also not open for the political parties to take up a plea that felt situation demanded calling for a bandh to lodge protest against the failure of the State Government to take timely action and to give vent to the anger of the large population, which was terrorised at the hands of terrorist. It was always open for the respondent nos. 4 and 5 to call for a general strike or to appeal to people to register their protest, without resorting to a "bandh" or a "Hartal" in the nature of a "bandh".The political parties or organisations

cannot in the name of protest against the terrorism, terrorise the city of more than 15 million inhabitants into staying at home and closing down their shops and businesses and other establishments by coercion, intimidation and violence. We have therefore no hesitation to hold that respondent nos. 4 and 5 have violated constitutionally guaranteed rights of the citizens of Mumbai under Articles 19 and 21 of the Constitution by calling and enforcing "Mumbai Bandh" on 30th July, 2003.

11. We are also constrained to observe that the affidavit filed by the State Government is not at all convincing and on the whole the State’s approach to the bandh to say the least can be said to be soft peddling totally unmindful of the constitutional rights of the citizens and the hardship suffered by the people on account of a bandh. In a recent decision in the case of J.S.Martin Vs. State of Kerala (2004) 2 SCC 203, the Supreme Court has strongly condemned those who in the name of hartal or strike or bandh endanger the public life, liberty and property of citizens and public enabling anti social forces to gain control resulting in all round destruction. The

Court observed that it is high time that the authorities concerned to take serious note of this requitrement while dealing with those who destroy the public property in the name of strike, hartal or bandh. No person has any right to destroy another's property in the guise of bandh, hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. Unless such acts are controlled with iron hand, innocent citizens are bound to suffer and they shall be the victims of the high handed acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides no licence to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace. It is, therefore, not open to the respondent nos. 1 to 3 to avoid taking stern action against those involved in rasta rokos and rail rokos and stoning of public and private vehicles in the guise of tactful handling of situation and thereby allowing the political parties to bring the entire activity in the city to a stand still. We hasten to add that the learned Advocate General who addressed us categorically

stated that it is high time to take strong action against such bandhs and forced closures which are declared tobe violative of Articles l9 and 2l of the Constitution.The learned Advocate General has also submitted a list of preventive measures the State Government intends to take in future in cases of bandhs ‘or closures.

12. Now, the next question is whether this Court in exercise of jurisdiction under Article 226 of the Constitution can direct respondent nos. 4 and 5 to compensate the petitioners and other citizens of Mumbai for violation of their constitutionally guaranteed fundamental rights under Articles 19 and 21 of the Constitution. Mr.Chinoy, learned Counsel appearing for the petitioners, submitted that when powerful organizations or political parties persist in calling and enforcing bandhs despite the Supreme Court having held such exercise to be unconstitutional and in violation of citizens’ fundamental rights, a mere declaration of unconstitutionality does not provide any meaningful remedy to the citizens, whose fundamental rights have been violated and the Court should not stop at giving a mere declaration of unconstitutionality or of violation of fundamental rights, but the Court

must proceed further and direct the wrong doers namely respondent nos. 4 and 5 to pay compensation under the public law jurisdiction for violation of the fundamental rights of the citizens. Mr Chinoy drew our attention to the observations of the Kerala High Court in para 18 of its judgment, that political parties, which call for a "bandh" and enforce it, are liable to pay compensation to the Government, public and private citizens for the loss suffered by them by such destruction. According to the learned Counsel calling for and enforcement of the Mumbai bandh has resulted in huge losses to the citizens of Mumbai. Millions of citizens lost their daily wages/livelihood and were unable to travel or to attend to their businesses, jobs and professional duties. He urged that only way to recoup such loss from respondent nos. 4 and 5 would be by invoking jurisdiction of this Court under Article 226 of the Constitution of India. The individual citizens do not have ability or resources to sue and recover the compensation for the loss of their daily wages/earnings from the powerful political parties like respondent nos. 4 and 5. Even those in the organized sector would be fearful of initiating such proceedings and incurring wrath of politicians and their political

parties and tend to suffer violations of their constitutionally guaranteed fundamental rights, without seeking to hold the wrongdoers accountable. The learned Counsel urged that quantifying the figure of loss caused at Rs.50 crores is extremely conservative estimate. The actual loss would be substantially higher. The learned Counsel maintained that the order directing payment of compensation necessarily flows from the judgment of the Supreme Court in Bharat Kumar's case. On the other hand, Mr. Sanghi and Mr.Apte contended that the present writ petition is not maintainable in as much as what Articles 19and 21 attract are State actions and curtailment of fundamental rights of the citizens guaranteed thereunder and it is not open to this Court to issue directions to political parties in execution of powers under Article 226 of the Constitution who are not covered by the definition of 'State' under Article 12 of the Constitution. The decision in P.D.Shyamdaani vs Central Bank of India, A.I.R.1952 S.C.59 as well as the decision in Vidya Varma Vs.Shaila Narayan, AIR 1956 SC 108were relied upon in support. It was also contended that the public law remedy of compensation is available only against the State or its official or public functionaris for the

illegalities committed and by no stretch the political parties can be termed as public functionaries. The learned counsel also urged that the figures given by the petitioners are without any basis and are nothing but a mere guess work and such a claim cannot be entertained in writ jurisdiction under Article 226 and the same is required to be dealt with in a civil suit for damages. According to the learned counsel a relief of creation of a special fund also cannot be granted under Article 226 of the Constitution as it would amount to exercise of legislative or executive powers.

l3. At the outset we may state that the decision in P.D. Shyamdasani's case was considered by the Full Bench of Kerala High Court in Bharat Kumar's case and it was categorically held that the High Court in exercise of jurisdiction under Article 226 has jurisdiction to issue prerogative writ against the political parties and the decision in Bharat Kumar's case was specifically confirmed by the Supreme Court. It is therefore not possible to accept the contention that constitutionally guaranteed rights under Articles 19 and 21 are available only against the State and public

functionaries and not against the political parties. We shall, however, examine the matter independently apart from the decision of the Full Bench of Kerala High Court.

14. Article 226 (1) of the Constitution notwithstanding anything in Article 32 empowers the High Court through out the territory i relation to which it exercises jurisdiction, to issue to a person or authority, including in appropriate case, any government within those territories directions, orders or writs including the writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose; and it also envisages making of interim orders, whether by way of injunction or stay or in any other manner in such proceedings. Article 19 protects some of the important attributes of personal liberty as independent rights and the expression 'personal liberty' means in Art. 21 all the varieties of rights which make up the personal liberty of men. For enforcement of one's fundamental rights guaranteed under Articles 19 and 21 one could resort to Article 226 of the Constitution for

issuance of appropriate writ order or direction. As observed by the Supreme Court in S.N.D.Kiran Pasha Vs. Govt.of A.P.((1990)(1) SCC 328) when the right is guaranteed, it has to be understood in relation to its orbit and its infringement. Conferring right to life and liberty imposes a corresponding duty on the rest of the society, including the State, to observe that right, that is to say, not to act or do anything which would amount to infringement of that right, except in accordance with the procedure prescribed by law. In other words conferring the right on a citizen involves the compulsion on the rest of the society, including the State, not to infringe that right.

15. In Dwaraka Nath Vs. ITO, AIR 1966 SC 81, Subba Rao J. explaining the extent and scope of Art 226 observed:

> "This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or

authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature" for the said expression does not equate the writs that can be issued in India with those in England but only draws an analogy from the. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comp-aratively small country like England with a unitary form of Government in a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

(Emphasis supplied)

16. In Unni Krishnan J.P. Vs. State of A.P, AIR 1993 S.C.2178 the Court held that Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. to any -person or authority. It can be issued "for the enforcement of any of the Fundamental rights and for any other purpose." In this regard the following observations of the learned Chief Justice are pertinent.

> The term "authority" used in Article 226, the context must receive a liberal meaning unlike he term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs or endorsement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much

> relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.
>
> (Emphasis supplied)

17. In U.P.State Co.op Land Development Bank Ltd vs Chandra Bhan Dubey (1999) 1 SCC 741, a two Judge Bench of the Supreme Court upon an indepth analysis of its earlier judgments held that Article 226 while empowering the High Courts for issue of orders or directions to any authority or person does not make any difference between public functionaries and private functionaries. Wadhva J. speaking for the Bench observed :

> "It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in

this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English System of jurisprudence. Article 226 of he Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any government. Under clause (1) of Article 367, unless the context otherwise requires, the general Clauses Act, 1897 shall, subject to any adaptations and modifications that may be made herein under Article 372, apply for the interpretation of the Constitution as it applies to the interpretation of an Act of the legislature of the Dominion of India. "Person under Section 2 (42) of the General Clauses Act shall include any company or association or body of individuals whether incorporated or not. The Constitution is not a statute. It is a fountain head of all the statutes. When the language of article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an

interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be one by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But when the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self imposed limitations have been put there subject to which the High Courts could exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. "

(Emphasis supplied)

18. In Consumer Education & Research Centre vs Union of India, (1995) 3 SCC page 42, the Court observed:

28. "It would thus be clear that in an appropriate case, the court would give appropriate directions to the employer, be it the State or its undertaking or private employer to make the right to life meaningful; to relevant pollution of work place ; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by this Court under Article 32 and Article 142 of the Constitution.

29. Yet another contention of the petitioners is that the workmen affected by asbestos are suffering from lung cancer and related ailments and they were not properly diagnosed. They be sent to national institute and to such of those found suffering from diseases developed due to asbestos, proper compensation be paid. It is needless to reiterate that they need to be reexamined and cause for the disease and the nature of the disease diagnosed, thereon

deciding each one of them whether entitled to damages ? That the employer is vicariously liable to pay damages is unquestionable. The award of compensation in proceedings under Article 32 or Article 226 is a remedy available in public law. In Rudul Sah vs State of Bihar it was held that this Court under Article 32 can grant compensation for the deprivation of personal liberty though ordinary process of court may be available to enforce the right and money claim could be granted by this Court. Accordingly, compensation was awarded. This view was reiterated in Nilabati Behera vs State of Orissa and awarded monetary compensation for custodial death lifting the State immunity from the purview of public law. It is therefore settled law that in public law claim for compensation is a remedy available under Article 32 or Article 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional

remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the Statute or for the enforcement of any right or duty under the Constitution or the law.

"(Emphasis supplied)

l9. To the same effect is the view expressed in Bodhisatta Gautam vs Subhra Chakraborty (Ms), (1996) 1 SCC 490. The Court observed that under Article 32 of the Constitution it is the jurisdiction to enforce the fundamental right guaranteed by the Constitution by issuing writs in the nature of habeas corpus, mandamus, prohibition, co-warranto and certiorari. The fundamental rights can be enforced even against private bodies and individuals. Even a right to approach the Supreme Court for enforcing of the fundamental rights under

Article 32 itself is a fundamental right. The jurisdiction conferred by the Supreme Court under Article 32 is very wide as the Court while considering the petition for enforcement of any of the fundamental rights guaranteed in Part II of the Constitution in declaring an Act to be ultra virus or beyond the competence of the legislature and has also the power to award compensation for the violation of the fundamental rights. In that case, the Court directed payment of compensation to a victim of rape and observed that it is not necessary that such a person should personally approach the court as the Court can itself take cognizance of the matter and proceed suo moto or on a petition of a public spirited individual. The Court also observed that " right to life" does not merely mean animal existence but mean something more and right to life with the human dignity. Right to life would therefore include all aspects of life that would make life meaningful and complete and worth living .

20. In the light of the decided cases and settled legal position it is too late to contend that the fundamental rights guaranteed under Articles l9 and 2l are available only against State and public

functionaries and the political parties are not amenable to the jurisdiction of the High Court under Article 226 of the Constitution. Part IV-A of the Representation of the people Act, 1951 deals with registration of political parties. Section 29-A provides for registration of an association or a body as a political party with the Election Commission. Section 29-A (5) compels the association or body seeking registration to produce a memorandum or rules and regulations of the Association with a provision therein " that the association or body shall bear true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. This would compel the political party to respect the fundamental rights of the citizens, embodied in Part III of the Constitution and to recognise the fundamental duties enunciated in Article 51-A of the Constitution. The respondent nos. 4 and 5 are registered political parties and are duty bound to respect the fundamental rights of the citizens and if it is found that they are guilty of violating the fundamental rights of the citizens, this Court under Article 226 can grant approrpriate reliefs to

the affected citiens including compensation or damages for the loss suffered by them.

2l. In D.K.Basu vs State of W.B ((l997) l SCC 4l6) Dr.Anand J.(as His Lordship then was) observed that there is no wrong without a remedy and the law wills that in every case that a man is wronged or endamaged he must have a remedy. A mere declaration of invalidity of action or a finding of violation of constitutionally guaranteed fundamental rights does not by itself provide any meaningful remedy to a person whose fundamental rights have been infringed.The Court must proceed further and give compensatory relief not by way of damages as civil action but by way of compensation under the public law jurisprudence for violation of the fundamental rights of the citizens. In the present case various acts of rail rokos, rasta rokos and stoning of public and private vehicles etc. are undoubtedly punishable under various sections of the Penal Code but these statutory provisions are inadequate to repair the wrong done to the citizens. The prosecution of the offenders is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court as a

protector and guarantor of the indefeasible rights of the citizen can grant pecuniary compensation to the victim where infringement of the fundamental right is established. To quote the words of O'Dalaigh,C.J., "It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizens that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at nought or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires".

22. There is a long line of cases awarding compensation for infringement of the fundamental rights to a citizen. In Rudul Sah vs State of Bihar, (1983) 4 SCC 141, it was held that in a petition under Article 32 of the Constitution, the Court can grant compensation for the deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. Chandrachud, C.J. dealing with this aspect stated as under :

" In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to he judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their

> protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that respect for the rights of the individuals is the true bastion of democracy. Therefore the State must repair the damage done by its officers to the petitioner's right. It may have recourse against those officers. "
>
> (Emphasis supplied)

23. The decision in Rudul Sah was followed in Sebestian Houngrey vs Union of India, (1984) 1 SCC 339, Sebestian vs Union of India (1993) 3 SCC 82, Bhimsing vs State of J and K,(1984) Suppl SCC 504, Bhimsing vs State of J and K (1985) SCC 677, A Human Resources Centre vs Commissioner of Police Delhi Police HQ, (1990) 1 SCC 422 and State of Maharashtra vs Ravi Patil, (1991) 3 SCC 273. In Nilabati Behera vs State of Orissa, (1993) 2 SCC 746, Justice Verma, (as His Lordship then was) observed :

"It follows that a claim in public law for compensation ' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct' from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers and enforement of the fundamental

right is claimed by resort to the remedy in public law under the constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation for contravention of fundamental rights.....

This view finds support from the decision of this Court in Bhagalpur Blinding cases :Khatri (II) vs State of Bihar and Khatri (IV) vs State of Bihar wherein it was said that the court was not helpless to grant relief in a case of isolation of the right to life and personal liberty ; and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of other case must be adopted for conducting the inquiry needed to ascertain the necessary facts, for granting the relief as the available mode of redress for enforcement of the guaranteed fundamental rights. More recently, in Union Carbide Corpn vs Union of

> India Misra, CJ stated that " we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future, there is no reason why we should hesitate to evolve such principle of liability. .. " To the same effect are the observations of Venkatachaliah, J (as he then was) who rendered the leading judgment in the Bhopal gas case with regard to the court's power to grant relief. "

24. Dr. Anand, J. in his concurring judgment observed as under :

> "The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.....

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation as exemplary damages in proceedings under Art 32 by this court or under Art 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Art 21 of the constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to utilise public power but also to assure the citizen that they live under a legal system which aims to protect their interest to preserve their rights. Therefore, when the court moulds the relief by granting " compensation" in proceedings under Art. 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights it does so under the public law by way of penalising the wrong doer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental

rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law. "

(Emphasis supplied)

25. In Neelabati Behera's case the Court cited with approval the decision of the Privy Council in Maharaj Vs.Attorney General of Trinidad and Tobago (No.2), (1978)2 All ER 670. That case related to

Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental freedoms, wherein Section 6 provided for an application to the High Court for redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened was expressly rejected. It was held that an order for payment of compensation, when a right protected had been contravened, is clearly a form of "redress" which a person is entitled to claim under Section 6 and may well be 'the only practicable form of redress" . Lord Diplock who delivered the majority opinion, at page 679 stated:

> "It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in Jaundoo Vs.Attorney General of Guyana. Reliance was placed on the

> reference in the sub section to "enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 has been contravened is clearly a form of "redress" which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction "to hear and determine any application made by any person in pursuance of sub-section (1) of this section. The very wide powers to make orders, issue writs and give directions are ancillary to this".

Lord Diplock further stated at page 680 as under:

> "Finally, their Lordships would say something about the measure of monetary

> compensation recoverable under section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation.It is a claim in public law for compensation for deprivation of liberty alone."
>
> (Emphasis supplied)

26. Thus, to sum up, it is now well accepted position that monetary or peculiary compensation is appropriate and indeed an effective and some times perhaps the only suitable remedy for redressal of the established infringement of the fundamental rights of the citizens. The claim for compensation for established infringement of the fundamental rights guaranteed under the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under legal system wherein their rights and interest

shall be protected and preserved. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty. The compensation is in the nature of 'exemplary damages" awarded against the wrongdoers for violation of the fundamental rights and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in the court of competent jurisdiction and/or prosecute the offender under the penal law. Moreover, the court's power to award compensation is not restricted to the State and public functioneries and the award of compensation can be made even against private individuals for violating the fundamental rights guaranteed by the Constitution. Thus, in Consumer Education Research vs Union of India (supra) the Supreme Court directed private employers to pay compensation to the workers working in asbestos industries and held that the authorities and even private persons or individuals are bound by the

directions issued by the Court. In Bodhi Satawa Gautam (supra) the Supreme Court invoked its power under Art 32 to direct the accused to pay monthly compensation to a rape victim pending criminal trial. Similarly, in M.C.Mehta vs Kamal Nath (2000)6 SCC the Court directed M/s Span Motels which was found guilty of causing pollution to pay damages to those who have suffered loss on account of the act of the company. The Court observed in para 10 as follows :

> " In the matter of enforcement of fundamental rights under Article 21 under public law domain, the court in exercise of its powers under Article 32 of the Constitution has awarded damages against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. The Court while awarding damages also enforces the "POLLUTER PAYS PRINCIPLE" which is widely accepted as a means of paying for the cost of pollution and control. To put in other words, the wrongdoer, the polluter is under an

obligation to make good the damage caused to the environment. "

(Emphasis supplied)

27. A reference may also be made to a recent decision in M.S.Grewal vs Deep Chand Sood & ors reported in (2001) 8 SCC 151. In that case, the Court came to the conclusion that the school authorities were guilty of negligence which resulted in unfortunate death of several school children. The court directed the school authorities to pay compensation of Rs. 5,00,000/ per child. The following observations of the Court are pertinent:

"26. Next is the issue of "maintainability of the writ petition" before the High Court under Article 226 of the Constitution. The appellants though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the civil law and thus the civil court’s jurisdiction ought to have been invoked rather than by way of a

writ petition under Article 226 of the Constitution. This plea of non maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on the score, excepting however recording that the law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context, reference may be made to two decisions of this Court: the first in line is the decision in Nilabati Behera Vs. State of Orissa wherein this Court relying upon the decision in Rudul Sah (Rudul Sah v.State of Bihar) decried the illegality and impropriety in awarding compensation in a proceeding in which the Court's power under Articles 32 and 226 of the Constitution stands invoked and thus observed that it was a clear case for award of compensation to the petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of

the State's obligation, unless of course the State can also be termed to be a joint tortfeasor, but since the case of the parties stands restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except nothing the two decisions of this Court as above and without expression of any opinion in regard thereto."

"28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system affection of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in D.K.Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established

> the current trend of "justice oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society. Technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."
>
> (Emphasis supplied)

28. Mr.Sanghi and Mr.Apte strenuously contended that the relief claimed by the petitioners is too vague and without recording a positive finding as to the complicity of respondent nos. 4 and 5 in the alleged incidents of rail rokos and rasta rokos etc. this Court should not accept the claim for damages, which, according to the learned Counsel, is highly exaggerated and inflated. The learned Counsel relying upon the decision of the Supreme Court in Common Cause, a registered Society Vs. Union of India and others, (1999) 6 SCC 667 also attempted to contend that such a claim, which is filed on behalf of indeterminable number of citizens has no basis in law and in absence of

those citizens being made parties or those citizens making any specific claim this Court should not award damages as claimed by the petitioners. In this regard reliance is also placed on the decision of the Supreme Court in A.K.Singh and ors. Vs. Uttarkhand Janmorcha and others (1999) 4 SCC 476. We are afraid that both the decisions cited by the learned Counsel have no application to the facts of the case. In the case of Common Cause, the Supreme Court on the basis of a newspaper report published in "Indian Express", issued notice to Cpt.Satish Sharma who was at that time Minister for State for Petroleum and Natural Gas in Union Govt. By judgment dated 25th September, 1996, all 15 petrol outlets allotted by the Minister to various persons out of his discretionary quota were cancelled and Cpt.Sharma was directed to pay a sum of Rs.50,00,000 as exemplary damages to the Govt. Exchequer. In the review petition, which was filed by Capt.Satish Sharma, the Court held that the Common Cause was not one of the applicants for allotment of petrol outlet and had Common Cause approached the civil Court for damages on account of tort of misfeasance in public office its suit would have been dismissed on the ground that it was not one of the applicants for petrol outlet; its

own interest was not injured in any way nor had Capt.Satish Sharma made allotment maliciously or with knowledge that the allotment would ultimately harm the Common Cause. The Court held that the State also legally cannot claim damages as one of its officers has violated the fundamental rights of the citizen and has acted arbitrarily. The plaintiff cannot recover exemplary damages unless he is victim of punishable behaviour. Since there was no plaintiff who suffered any damages or loss on account of conduct of Capt.Satish Sharma it was held that the claim for damages could not be awarded. In the instant case the petitioners who are citizens of the city had specifically claimed that their fundamental rights have been violated by reason of "bandh" enforced by respondent nos. 4 and 5. Petitioner Nos. 5 to 8 are all daily wagers and they have complained that they lost their daily wages on account of bandh. The claim of the petitioners is for creating a fund on behalf of the petitioners as well as other citizens in the city whose fundamental rights were violated by enforcement of illegal bandh. It is difficult to see how in such a situation the decision in Common Cause case could be made applicable.

29. The next case cited by the learned Counsel for respondent nos. 4 and 5 in A.K.Singh and others Vs. Uttarkhand Janmorcha and others is equally inapplicable to the facts of the instant case. In that case writ petition was filed by Uttarkhand Sangharsha Samiti seeking a direction to the State authorities in connection with confrontation between agitators and administration which resulted in deaths, injuries and molestation of women. The High Court directed the State Government to pay huge amount as compensation to the victims and to make the fund allotment (in several crores of rupees) for development of Kumaon and Garhwal region by way of separation to people of those regions. It was held that such a direction which resulted in great financial burden on the State at the premature stage when the trial is pending, without consideration of evidence, without having regard to the financial capacity, resources to State and legislative mandate involving the State funding were in excess of the High Court's jurisdiction under Article 226 of the Constitution and unwarranted in the facts and circumstances of the case. In our view, this judgment has no relevance in the facts and circumstances of the present case. However, the learned Counsel

insisted that observations made in the judgment indicate that the Court is precluded from awarding damages in a case where criminal case is pending and yet to be tried by the competent criminal court. We do not think that any such general proposition is laid down in the said case. In any event, it would be totally unfair to deny the citizens of just and fair compensation for violation of their fundamental rights on the specious ground of pendency of some individual criminal cases which have been registered by the police especially when there is no progress in the investigation in the complaint recorded by the police and for more than one year no action has been taken against those who were involved in violence and destruction of public property.

30. In our opinion, calling and enforcement of "Mumbai Bandh" on 30th July, 2003 by respondent nos. 4 and 5 constitutes a clear violation of fundamental rights of the petitioners and other citizens of Mumbai guaranteed by Articles 19 and 21 of the Constitution of India. Respondent Nos. 4 and 5 had proceeded with the said bandh despite pronouncement of Supreme Court of India and of this Court causing grievous loss and hardships to the

thousands and lacs of citizens of Mumbai especially who are employed in unorganized sector as daily wages. They do not have the ability or resources to sue and recover compensation for the loss of their daily wages/ earning from the political parties such as respondent nos 4 and 5. Even those in organised sector would be fearful of initiating such proceedings and incurring wrath of politicians and their political parties and would suffer violation of their constitutionally guaranteed fundamental rights, without seeking any remedy against wrong doers. The Supreme Court has ruled that where judicial redress is sought in respect of legal injury or legal wrong suffered by persons, who for the reason of their poverty or disability or otherwise, are unable to approach the Court for enforcement of their fundamental rights, any member of the public, acting bonafide, can maintain action for judicial redress. Therefore the petition filed by the petitioners seeking redressal of the grievances on behalf of the citizens of Mumbai is perfectly maintainable. It is now fairly well settled that Court can grant exemplary damages where there is violation of the fundamental rights of the citizens. The primary object of award of damages is to compensate the citizens for the harm

done to them. The damages are also awarded as deterrent to parties who have been responsible for violating the rights of the citizens with impunity. The object is not only to punish the individual concern, but also to serve as deterrent to others and to prevent from indulging in such wrongs, which is necessary in the public interest. There cannot be any dispute that the loss suffered by the citizens in the city on account of Mumbai bandh enforced by respondent nos. 4 and 5 is enormous, and may be several crores of rupees. Mumbai is considered to be the financial capital of the country, and the loss of man-hours on account of 'bandh' has a cascading effect, and causes serious inconvenience and hardship to the people living in the city. At the same time, we are also not unmindful of the fact that the claim for damages made by the petitioners is based on only estimate, and there is no factual data to establish that the citizens suffered.

3l. Keeping in mind the relevant considerations, we are of the view that this is a fit case where respondent nos.4 and 5 should be directed to deposit by way of exemplary damages, a sum of Rs.20,00,000 (Rupees Twenty lacs only) each. The

amount shall be deposited with the State Government in a separate fund to be named as "30th July 2003 Bandh Loss Compensation Fund". Considering the fact that the amount of damages ordered by us is only a token amount, looking at the loss suffered by lacs of people living in the city of Mumbai and keeping in view the difficulties in inviting and entertaining claims from indeterminate number and class of people and to adjudicate such claims, we feel that the interest of justice would be served, if this amount is utilised for providing facilities, benefits and additional services to the citizens of Mumbai.

32. We are of the view that this is high time that the authorities concerned should take a serious note of the consequences and apprehension of risk to life, liberty and property of the citizens in ‘bandh’ or coerced closure enforced by the political parties and organisations. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer, and they shall be continued to be victimized by the parties and organizers who think that they have licence to take law into their hands. We are satisfied that the State authorities failed to deal with the

organizers of the ‘bandh’ with a firm hand. It is seen that in the guise of tactful and mature handling of the situation, the police failed to take stern action against the organizers of Bandh and though some cases have been registered on account of incidents of rail rokos, rasta rokos and violence there is no further progress in the investigation, and all these cases have beem kept in cold storage. On this background, we welcome the stand taken by the learned Advocate General that the State must firmly deal with the political authorities or organizations calling such bandhs or hartals in the nature of bandh. In the result we dispose of this petition with the following declarations and directions:-

l) It is declared that the calling for and enforcing Mumbai bandh by the respondent nos. 4 and 5 on 30th July 2003 was constitutional and violative of the fundamental rights of the petitioners and other citizens of Mumbai guaranteed under Articles l9 and 2l of the Constitution;

2) The respondent nos. 4 and 5 are directed to deposit with the State Government the

amount of compensation of Rs.20 lacs (Rupees Twenty Lacs only) each to the special fund to be created under the name "The 30th July 2003 Bandh Loss Compensation Fund" and this amount be utilised for providing facilities, benefits and additional services to the citizens of Mumbai;

3) It is declared that the enforcement of a ‘bandh’ or a ‘hartal’ would amount to an unconstitutional act, and any political party, organisation, association, group or individual giving such call for bandh or hartal to force or intimidation or otherwise;

4) The concerned political party, organization, association, group or individual giving ‘bandh’ call will be served with a notice under section l49 of the Criminal Procedure Code. In the notice, attention will be drawn to the judgments of the Supreme Court and this Court regarding illegality of ‘bandh’. The notice will clearly state that such a political party, organisation, association, group or

individual will be liable for legal action and compensation for loss of life, injury or for loss of livelihood due to ‘bandh’.

5) We direct the State, District Collectors and all other officers of the State to ensure:

a) that no political party, organisation, association, group or individual can, by organising a ‘bandh’, or by force or intimidation, stop or interfere with road and rail traffic or the free movement of citizens in city of Mumbai or State.

b) To take all actinos, including arrest, detention and prosecution against those who seek to enforce such ‘bandh’ or ‘hartals’ by organising, leading or participating in rail and rasta rokos and assautls on trains, buses, other vehicles and private citizens.

6) The police shall take appropriate action against the person or persons involved in such 'bandh' under provisions of the Indian Penal Code, Criminal Procedure Code and Bombay Police Act, and submit action taken report in such cases to the Sessions Judge of the concerned District.

7) The general public shall be informed by issuing press note through print media and also through electronic media informing them about the preparations made by the police to deal with 'bandh' and for making people secured.

8) A visible police presence shall be maintained throughout the city prior to the 'bandh' in preference to other police duties.

9) A visible bandobast outside railway stations, bus depots, main roads, main junctions, hospitals, courts, schools and colleges will be maintained during 'bandh'.

l0) Wireless mobile patrolling, Beat

Marshall Patrolling, fixed point bandobast shall be deployed to curb any ontoward incident on ‘bandh’ day.

ll) Necessary protection to market and business places shall be given.

l2) There shall be video-recording so as to identify miscreants and to book them under law.

l3) All police control rooms will be fully activited to follow up incidents regarding ‘bandh’, to take proper, stern and timely action.

l4) The police shall complete the investigations in the various offences recorded on the ‘bandh’ on 30th July 2003, and complete the investigations and file charge-sheets against the accused expeditiously.

l5) The Chief Secretary of the Government, Director-General of Police and all other officers to take all necessary steps to give

effect to the above directions.

. On the request made by learned counsel appearing for respondent nos. 4 and 5, the direction issued against respondent nos. 4 and 5 for deposit of damages is stayed for a period of eight weeks.

. All the concerned to act on copies of this judgment, duly authenticated by the Associate/ Private Secretary.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Writ Petition PIL No. 2827 of 2003

Date of Judgment: 23rd July, 2004

For approval and signature of:

Th**e Hon'ble Mr.A.P.SHAH Acg C.J.**

The Hon'ble Mr.S.U KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION [P.I.L.] NO. 2827 OF 2003

1. B.G.Deshmukh and ors.. petitioners

VERSUS

1.The State of Maharashtra & ors.. respondents

Mr Aspi Chinoy, Senior Counsel with Mr. Janak Dwarkadas with Mr.Jamshed Mistry and Mr. Rahul Dwarkadas instructed by M/s Wadia Gandhy and co for petitioners

Mr.Niranjan Pandit, Asst.Govt. Pleader,for respondent nos.l to 3

Mr Balkrishna Joshi with Ms Bharti Mahant and Ms Pushpa Diwan for respondent no.4

Mr. Subhash Jha and Mr. Gaurav Agarwal for respondent no.5

CORAM: A.P.SHAH &
S.U KAMDAR JJ.
Dated 22nd June 2005

P.C.

. Interim stay regarding deposit of damages is extended for a period of eight weeks from today.